IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2845 OF 2006

Kamruddin Mustafa Khan .. applicant
Versus
State of Maharashtra & Anr. .. Respondent

Mr.Rishi Bhuta with Mr.S.S.Gandhi for applicant
Mr.P.S.Hingorani, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 29th August 2006

P.C.

. The applicant is an accused in Sessions Case No.961 of 2002 which is pending on the file of the 9th Ad-hoc Additional Sessions Judge, Seweree, Mumbai.

2. During the course of trial, the applicant was enlarged on bail. However, a non-bailable warrant was issued on 24th September 2005 because

of the fact that the applicant failed to attend trial in the said sessions case. In pursuance of the non bailable warrant, the applicant has been taken into custody and at present he is in judicial custody.

3. It appears from the record that one more criminal case has been registered against the applicant and in that case on 27th April 2006, bail was granted by the learned Sessions Judge. The applicant was taken into custody in that case on 5th April 2006. In the present case, i.e. 1992's sessions case, the applicant has been arrested on 5th April 2006 and is in jail for the past more than four months.

4. Applicant, has through his Counsel, Mr.Bhuta contended before me that learned Judge is not right in holding that the applicant has repeatedly avoided attending the trial so also is habitually shifting his residence. He submits

that there is no substance in the observations and finding that applicant would jump bail or would tamper with the prosecution witnesses, if released on bail. He submits that there is no material produced in that behalf and the learned Sessions Judge was clearly in error in observing that the applicant would not cooperate in the conclusion of the trial or that he would tamper with the witnesses in the said sessions case.

5. Mr.Bhuta submits that apart from the other cases in which he is enlarged on bail, the applicant has not been shown as accused in other criminal cases nor does he have any antecedents. He submits that the applicant in fact along with his family is the owner of immovable property situate at Kamlakar Nagar, Kohejgaon, Ambarnath and has produced original ration card issued in his name. Applicant is a family man and is residing with his wife and children. In such circumstances, the applicant need not be detained

in custody.

6. There is a specific statement that the applicant would abide by all conditions as are imposed by this Court. The learned A.P.P. submits that the proof of his so called residence is being tendered in this court for the first time. There is no substance in the contention and the learned Sessions Judge was right in the conclusion that he has reached. Consequently, this application be dismissed.

7. After perusing he application and the annexures thereto so also hearing the learned Advocates for both sides, in my view, the applicant having been enlarged on bail in the other case, interest of justice would be sub-served, if, upon verification and scrutiny of documents pertaining to ownership and possession so also residence of applicant, the applicant is enlarged on bail. However, stringent conditions

need to be imposed as the applicant is accused in two sessions cases. In the case in which he is shown absconding, is fairly old and is ripe for hearing now. In such circumstances, following order would meet the ends of justice.

i) The applicant arrested in connection with C.R.No.961 of 2002 registered with Sakinaka Police Station shall be enlarged on bail subject to furnishing a personal bond of Rs.15,000/- with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the applicant will remain present before the concerned investigating officer on every Saturday between 11.00 a.m. and 1.00 p.m. till the conclusion of trial. The applicant

shall be released only on satisfaction of I.O. with regard to his ownership, possession and residential address mentioned in the cause title so also in the photocopy of ration card tendered in court.

iii) The order of bail will be given effect only after the applicant furnishes to the investigating officer the details about his place of residence and address where he proposes to stay after he is enlarged on bail. The applicant will not change his residential address thereafter till the conclusion of trial without prior intimation to the Investigating officer.

iv) The bail is granted subject to condition that the applicant shall not directly or indirectly, make any

inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

v) The applicant shall cooperate with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) Parties to act on an

authenticated copy of this order.

(S.C.DHARMADHIKARI, J)